IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2125 OF 2004.
IN
FIRST APPEAL NO. 585 OF 1999.

Ishwarlal Shamalji Ajmera & anr. ... Applicants.
Versus.
Shankar TGukatram Masulkar & ors. ... Respondents.

Ms.Sindha Shreedharan for the Applicants.

Shri P.K.Hushing for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 25th January, 2007.

P.C.:

1. Heard the learned Advocate for the Applicants and the learned Advocate for the Respondents. The Applicants are the Appellants in the First Appeal which has been admitted for final hearing. By the decree which is the subject matter of the Appeal, the Applicants have been restrained from making use of the power of attorney dated 18th November 1980 executed in their favour by the original Plaintiffs. The learned trial Judge held that the said power of attorney is cancelled, ineffective and is not binding on the Plaintiffs. Prayer (a) in this Application is for an injunction restraining the Respondents (Original Plaintiffs) from interfering with the irrevocable power of attorney dated 18th November 1980 executed in favour of the Applicants. The second prayer is for stay of execution and operation of the impugned judgment and decree.

2. Civil Application No.2028 of 1999 was taken out by the Applicants in the Appeal praying for stay of execution of the impugned Judgment and decree. The said application has been disposed of on 19th April 1999 by this Court without granting the prayer for stay. Apart from the said order, by the very nature of the operative part of the decree, prayer for grant of stay cannot be considered. If prayer (a) regarding the power of attorney is granted, it will virtually amount to granting final relief in favour of the Applicants at this stage. Hence, prayer clauses (a) and (b) cannot be granted.

3. Hence, the Application is rejected. Liberty to the Applicants to apply for expeditious hearing of the Appeal after the Appeal is ready in all respects for final hearing.

Judge.